
HOUSE BILL 2166

State of Washington

64th Legislature

2015 Regular Session

By Representatives McCabe, Blake, Pettigrew, Wilcox, Takko, Buys, Kochmar, Hayes, Vick, Harmsworth, Haler, MacEwen, Wilson, and Magendanz

Read first time 02/20/15. Referred to Committee on Finance.

1 AN ACT Relating to extending the federal internet tax freedom act
2 to Washington state by preserving the current treatment; amending RCW
3 35.21.714, 35.21.717, 35.21.860, 35.21.865, 35.21.870, and
4 35A.82.060; adding a new section to chapter 82.08 RCW; adding a new
5 section to chapter 82.12 RCW; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** This section is the tax preference
8 performance statement for the sales and use tax exemption contained
9 in sections 2 and 3 of this act. This performance statement is only
10 intended to be used for subsequent evaluation of the tax preference.
11 It is not intended to create a private right of action by any party
12 or be used to determine eligibility for preferential tax treatment.

13 (1) The legislature categorizes the tax exemption in sections 2
14 and 3 of this act as ones intended to reduce structural
15 inefficiencies in the tax structure as indicated in RCW
16 82.32.808(2)(d) and to accomplish a general purpose not identified in
17 RCW 82.32.808(2) (a) through (e).

18 (2) It is the legislature's specific public policy objective to
19 provide telecommunications service providers and internet access
20 providers with certainty and continuity regarding the application of
21 sales and use tax and city or town license fee or tax to

1 telecommunications service purchased, used, or sold to provide
2 internet access or to otherwise enable users to access content,
3 information, or other services offered over the internet. It is the
4 legislature's intent to preserve internet service providers' current
5 sales and use tax exemption for telecommunications services
6 purchased, used, or sold to provide internet access service or to
7 otherwise enable users to access content, information, or other
8 services offered over the internet and to preserve and limit city or
9 town license fees or taxes in a parallel manner. A federal law known
10 as the internet tax freedom act currently prohibits the state from
11 imposing sales or use tax on telecommunications service used to
12 provide internet access and Washington cities and towns from imposing
13 telephone business tax under RCW 35.21.860 through 35.21.870 on the
14 same service. The internet tax freedom act was originally enacted as
15 a temporary measure in 1998 and has been extended four times. The
16 internet tax freedom act is currently scheduled to expire October 1,
17 2015.

18 (3) The legislature intends to permanently establish the tax
19 preference provided in sections 2 and 3 of this act.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08
21 RCW to read as follows:

22 The tax levied by RCW 82.08.020 does not apply to sales of
23 telecommunications service described in RCW 82.04.297(2)(b).

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12
25 RCW to read as follows:

26 The provisions of this chapter do not apply to the use of
27 telecommunications service described in RCW 82.04.297(2)(b).

28 **Sec. 4.** RCW 35.21.714 and 2007 c 6 s 1018 are each amended to
29 read as follows:

30 (1) Any city (~~which~~) that imposes a license fee or tax upon the
31 business activity of engaging in the telephone business which is
32 measured by gross receipts or gross income may impose the fee or tax,
33 if it desires, on one hundred percent of the total gross revenue
34 derived from intrastate toll telephone services subject to the fee or
35 tax(~~(- PROVIDED, That)~~). However, the city (~~shall~~) may not impose
36 the fee or tax on that portion of network telephone service (~~which~~)
37 that represents charges to another telecommunications company, as

1 defined in RCW 80.04.010, for connecting fees, switching charges, or
2 carrier access charges relating to intrastate toll telephone
3 services, or for access to, or charges for, interstate services, or
4 charges for network telephone service that is purchased for the
5 purpose of resale, or charges for mobile telecommunications services
6 provided to customers whose place of primary use is not within the
7 city.

8 (2) Any city that imposes a license tax or fee under subsection
9 (1) of this section has the authority, rights, and obligations of a
10 taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

11 (3)(a) Except as provided otherwise in this subsection, the
12 definitions in RCW 82.04.065 and 82.16.010 apply to this section.

13 (b) "Internet access service" has the same meaning is provided in
14 RCW 82.04.297; however, for the purposes of this section, "internet
15 access service" includes the sale of telecommunications service
16 purchased, used, or sold by a person that provides a service that
17 enables users to connect to the internet to access content,
18 information, or other services offered over the internet, to the
19 extent such telecommunications service is purchased, used, or sold:

20 (i) To provide such service; or

21 (ii) To otherwise enable users to access content, information, or
22 other services offered over the internet.

23 **Sec. 5.** RCW 35.21.717 and 2009 c 535 s 1101 are each amended to
24 read as follows:

25 (1) A city or town may tax internet access providers under
26 generally applicable business taxes or fees, at a rate not to exceed
27 the rate applied to a general service classification.

28 (2) For the purposes of this section, "internet access" has the
29 same meaning as in RCW 82.04.297; however, for the purposes of this
30 section, "internet access" includes the sale of telecommunications
31 service purchased, used, or sold by a person that provides a service
32 that enables users to connect to the internet to access content,
33 information, or other services offered over the internet, to the
34 extent such telecommunications service is purchased, used, or sold:

35 (a) To provide such service; or

36 (b) To otherwise enable users to access content, information, or
37 other services offered over the internet.

1 **Sec. 6.** RCW 35.21.860 and 2014 c 118 s 2 are each amended to
2 read as follows:

3 (1) No city or town may impose a franchise fee or any other fee
4 or charge of whatever nature or description upon the light and power,
5 or gas distribution businesses, as defined in RCW 82.16.010, or
6 telephone business, as defined in RCW 82.16.010, or service provider
7 for use of the right-of-way, except:

8 (a) A tax authorized by RCW 35.21.865 may be imposed;

9 (b) A fee may be charged to such businesses or service providers
10 that recovers actual administrative expenses incurred by a city or
11 town that are directly related to receiving and approving a permit,
12 license, and franchise, to inspecting plans and construction, or to
13 the preparation of a detailed statement pursuant to chapter 43.21C
14 RCW;

15 (c) Taxes permitted by state law on service providers;

16 (d) Franchise requirements and fees for cable television services
17 as allowed by federal law; and

18 (e) A site-specific charge pursuant to an agreement between the
19 city or town and a service provider of personal wireless services
20 acceptable to the parties for:

21 (i) The placement of new structures in the right-of-way
22 regardless of height, unless the new structure is the result of a
23 mandated relocation in which case no charge will be imposed if the
24 previous location was not charged;

25 (ii) The placement of replacement structures when the replacement
26 is necessary for the installation or attachment of wireless
27 facilities, the replacement structure is higher than the replaced
28 structure, and the overall height of the replacement structure and
29 the wireless facility is more than sixty feet; or

30 (iii)(A) The placement of personal wireless facilities on
31 structures owned by the city or town located in the right-of-way.
32 However, a site-specific charge shall not apply to the placement of
33 personal wireless facilities on existing structures, unless the
34 structure is owned by the city or town.

35 (B) A city or town is not required to approve the use permit for
36 the placement of a facility for personal wireless services that meets
37 one of the criteria in this subsection absent such an agreement. If
38 the parties are unable to agree on the amount of the charge, the
39 service provider may submit the amount of the charge to binding
40 arbitration by serving notice on the city or town. Within thirty days

1 of receipt of the initial notice, each party shall furnish a list of
2 acceptable arbitrators. The parties shall select an arbitrator;
3 failing to agree on an arbitrator, each party shall select one
4 arbitrator and the two arbitrators shall select a third arbitrator
5 for an arbitration panel. The arbitrator or arbitrators shall
6 determine the charge based on comparable siting agreements involving
7 public land and rights-of-way. The arbitrator or arbitrators shall
8 not decide any other disputed issues, including but not limited to
9 size, location, and zoning requirements. Costs of the arbitration,
10 including compensation for the arbitrator's services, must be borne
11 equally by the parties participating in the arbitration and each
12 party shall bear its own costs and expenses, including legal fees and
13 witness expenses, in connection with the arbitration proceeding.

14 (2) Subsection (1) of this section does not prohibit franchise
15 fees imposed on an electrical energy, natural gas, or telephone
16 business, by contract existing on April 20, 1982, with a city or
17 town, for the duration of the contract, but the franchise fees shall
18 be considered taxes for the purposes of the limitations established
19 in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the
20 costs allowable under subsection (1) of this section.

21 (3) For the purposes of this section, "network telephone service"
22 as defined in RCW 82.16.010 does not include the sale of
23 telecommunications service purchased, used, or sold by a person that
24 provides a service that enables users to connect to the internet to
25 access content, information, or other services offered over the
26 internet, to the extent such telecommunications service is purchased,
27 used, or sold:

28 (a) To provide such service; or

29 (b) To otherwise enable users to access content, information, or
30 other services offered over the internet.

31 **Sec. 7.** RCW 35.21.865 and 1983 c 99 s 4 are each amended to read
32 as follows:

33 (1) No city or town may change the rate of tax it imposes on the
34 privilege of conducting an electrical energy, natural gas, or
35 telephone business which change applies to business activities
36 occurring before the effective date of the change, and no rate change
37 may take effect before the expiration of sixty days following the
38 enactment of the ordinance establishing the change except as provided
39 in RCW 35.21.870.

1 (2) For the purposes of this section, "network telephone service"
2 as defined in RCW 82.16.010 does not include the sale of
3 telecommunications service purchased, used, or sold by a person that
4 provides a service that enables users to connect to the internet to
5 access content, information, or other services offered over the
6 internet, to the extent such telecommunications service is purchased,
7 used, or sold:

8 (a) To provide such service; or

9 (b) To otherwise enable users to access content, information, or
10 other services offered over the internet.

11 **Sec. 8.** RCW 35.21.870 and 2014 c 216 s 306 are each amended to
12 read as follows:

13 (1) No city or town may impose a tax on the privilege of
14 conducting an electrical energy, natural gas, steam energy, or
15 telephone business at a rate which exceeds six percent unless the
16 rate is first approved by a majority of the voters of the city or
17 town voting on such a proposition.

18 (2)(a) If a city or town is imposing a rate of tax under
19 subsection (1) of this section in excess of six percent on April 20,
20 1982, the city or town must decrease the rate to a rate of six
21 percent or less by reducing the rate each year on or before November
22 1st by ordinances to be effective on January 1st of the succeeding
23 year, by an amount equal to one-tenth the difference between the tax
24 rate on April 20, 1982, and six percent.

25 (b) Nothing in this subsection prohibits a city or town from
26 reducing its rates by amounts greater than the amounts required in
27 this subsection.

28 (3) Voter approved rate increases under subsection (1) of this
29 section may not be included in the computations under this
30 subsection.

31 (4) No city or town may impose a tax on the privilege of
32 conducting a natural gas business with respect to sales that are
33 exempt from the tax imposed under chapter 82.16 RCW as provided in
34 RCW 82.16.310 at a rate higher than its business and occupation tax
35 rate on the sale of tangible personal property or, if the city or
36 town does not impose a business and occupation tax on the sale of
37 tangible personal property, at a rate greater than .002.

38 (5) For the purposes of this section, "network telephone service"
39 as defined in RCW 82.16.010 does not include the sale of

1 telecommunications service purchased, used, or sold by a person that
2 provides a service that enables users to connect to the internet to
3 access content, information, or other services offered over the
4 internet, to the extent such telecommunications service is purchased,
5 used, or sold:

6 (a) To provide such service; or

7 (b) To otherwise enable users to access content, information, or
8 other services offered over the internet.

9 **Sec. 9.** RCW 35A.82.060 and 2007 c 6 s 1014 are each amended to
10 read as follows:

11 (1) Any code city (~~which~~) that imposes a license fee or tax
12 upon the business activity of engaging in the telephone business
13 (~~which~~) that is measured by gross receipts or gross income may
14 impose the fee or tax, if it desires, on one hundred percent of the
15 total gross revenue derived from intrastate toll telephone services
16 subject to the fee or tax(~~:- PROVIDED, That~~). However, the city
17 (~~shall~~) may not impose the fee or tax on that portion of network
18 telephone service (~~which~~) that represents charges to another
19 telecommunications company, as defined in RCW 80.04.010, for
20 connecting fees, switching charges, or carrier access charges
21 relating to intrastate toll telephone services, or for access to, or
22 charges for, interstate services, or charges for network telephone
23 service that is purchased for the purpose of resale, or charges for
24 mobile telecommunications services provided to customers whose place
25 of primary use is not within the city.

26 (2) Any city that imposes a license tax or fee under subsection
27 (1) of this section has the authority, rights, and obligations of a
28 taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

29 (3)(a) Except as provided otherwise in this subsection, the
30 definitions in RCW 82.04.065 and 82.16.010 apply to this section.

31 (b) "Internet access service" has the same meaning as provided in
32 RCW 82.04.297; however, for the purposes of this section, "internet
33 access service" includes the sale of telecommunications service
34 purchased, used, or sold by a person that provides a service that
35 enables users to connect to the internet to access content,
36 information, or other services offered over the internet, to the
37 extent such telecommunications service is purchased, used, or sold:

38 (i) To provide such service; or

1 (ii) To otherwise enable users to access content, information, or
2 other services offered over the internet.

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